

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

October 30, 2000

D036327 Dixon v. Superior Court of San Diego County/Dixon

No objection having been received, the petition is dismissed as moot.

D033673 People v. Foster

The judgment is affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Work, J.

D034201 In re Colby B., a Juvenile

The juvenile court's order is affirmed but for the order Colby pay a \$100 restitution fine. The order that Colby pay the \$100 restitution fine is reversed and the matter is remanded for a determination of whether Colby has the ability to pay the \$100 restitution fine. Benke, J.; We Concur: Kremer, P.J., McDonald, J.

D034711 People v. Hampshire

The judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D034241 People v. Ronald W., a Juvenile

The order is affirmed. Benke, J.; We Concur: Kremer, P., McDonald, J.

D034511 People v. Rael

Judgment affirmed. Kremer, P.J.; We Concur: Huffman, J., McDonald, J.

D033612 People v. Rodriguez

The judgment is affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Work, J.

D034509 People v. Fisher

The judgment is affirmed. Kremer, P.J.; We Concur: Huffman, J., Haller, J.

D033888 People v. Frazier

The judgment is affirmed. Work, Acting P.J.; We Concur: Benke, J., Haller, J.

D033348 Smith v. Brunk

The judgment is affirmed. Kremer, P.J.; We Concur: Benke, J., McDonald, J.

D036300 Construction Repair Specialties & Interiors, Inc. v. Superior Court of San Diego County/Sanoni

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

October 31, 2000

D034353 National Home Insurance Company v. Continental Insurance Company et al.

The judgment favoring Continental Insurance Company is affirmed. The judgment favoring Assicurazioni Generali, S.p.A. and United National Insurance Company is reversed and the matter of appellant's claims against respondents Generali and United is remanded to the superior court for further proceedings. Respondent Continental shall have costs on appeal from appellant. Appellant shall have costs on appeal from respondents Generali and United. Kremer, P.J.; We Concur: Huffman, J., Haller, J.

D034271 In re Marriage of Benjamin

The orders are affirmed. Respondent's request for sanctions for a frivolous appeal is denied. Respondent is entitled to costs on appeal from Appellant. Kremer, P.J.; We Concur: Benke, J., McDonald, J.

D034031 People v. Madsen

The judgment and order are affirmed. Work, Acting P.J.; We Concur: Huffman, J., McIntyre, J.

D033709 Alesi v. Board of Retirement of the San Diego City Employees' Retirement System

The judgment is affirmed. Each party shall bear their own costs on appeal. CERTIFIED FOR PUBLICATION. Huffman, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D036093 In re Sara G., a Juvenile

The judgment is affirmed. Huffman, Acting P.J.; I Concur: Nares, J., I concur in the result. Haller, J.

D036088 James B. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. Huffman, Acting P.J.; We Concur: Nares, J., Haller, J.

D034005 Neumann et al. v. The Oceanside Manufactured Home Fair Practices Commission

The judgment is affirmed. The Commission is awarded costs on appeal. Huffman, J.; We Concur: Kremer, P.J., McIntyre, J.

D034846 Adams v. Williams et al.

The judgments are affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., Haller, J.

D036385 McMillin Construction Services v. San Diego County Superior Court/Valdez et al.

The petition is denied.

D035503 People v. Albin

The sentence is modified to strike the term imposed for the prison prior in case SCD151604. The Superior Court is directed to modify the abstract of judgment to reflect the reduction in sentence and to forward an amended abstract to the Department of Corrections. In all other respects the judgment is affirmed. Huffman, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

October 31, 2000 (continued)

D034343 People v. Guzman

D035619 In re Guzman on Habeas Corpus

The pending petition for writ of habeas corpus, *In re Ernest Guzman*, D035619, is consolidated with the pending appeal, *People v. Guzman*, D034343, for disposition.

D034343 People v. Guzman

D035619 In re Guzman on Habeas Corpus

(Consolidated.) The judgment is affirmed. The petition for writ of habeas corpus is denied. McDonald, J.; We Concur: Kremer, P.J., Benke, J.

D027959 Carto et al. v. Legion For The Survival of Freedom, Inc.

The judgment is affirmed. Respondents are entitled to costs on appeal. McDonald, J.; We Concur: Kremer, P.J., Nares, J.

D034759 Banks v. Partin

The judgment is affirmed. McDonald, J.; We Concur: Kremer, P.J., Benke, J.

D034630 People v. Johnson

Judgment affirmed. McIntyre, J.; We Concur: Nares, Acting P.J., McDonald, J.

D035230 People v. Strader

Judgment affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Work, J.

D035245 Stony Brook I Homeowners Ass'n et al. v. San Diego County Superior Court/Diehl

Let a writ of mandate issue commanding the trial court to vacate its orders of March 9, 2000, and March 10, 2000, and enter a new order directing that at his deposition Schwab provide plaintiff with the following information covering a three-year period of time: a numerical estimate of defense and plaintiff related medical-legal work, including exams, reports and deposition and court testimony, and a numerical estimate of the amount of income generated from said defense and plaintiff related litigation. If after a preliminary review of his files Schwab concludes this information can best be gathered by his voluntary use of a third party, such third party may compile the information and the costs shall be borne by Diehl. The trial court may, in its discretion and consistent with the views we have expressed herein, enter such further orders as it deems necessary. The parties will bear their own costs with the exception of those noted above. CERTIFIED FOR PUBLICATION. Benke, J.; We Concur: McIntyre, J., Work, Acting P.J.

D034745 People v. Warren

Judgment affirmed. Huffman, Acting P.J.; We Concur: Nares, J., McDonald, J.

D034507 People v. Stewart

D036176 In re Stewart on Habeas Corpus

The pending petition for writ of habeas corpus, *In re Richard Stewart*, D036176, is consolidated with the pending appeal, *People v. Stewart*, D034507, for disposition.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

October 31, 2000 (continued)

D034507 People v. Stewart

D036176 In re Stewart on Habeas Corpus

The trial court is directed to modify the abstract of judgment to reflect a 10-year term (double the four-year upper term for violating section 666.5, subdivision (a), enhanced by two 1-year enhancements for the prior prison terms), and forward a corrected copy to the Department of Corrections. As modified, the judgment is affirmed. The petition is denied. O'Rourke, J.; We Concur: Kremer, P.J., Huffman, J.

D036659 Dijulio & King v. Superior Court of San Diego County/Hauer

The petition is denied.

D035154 Bongard v. Edward, Sooy & Byron et al.

The petition for rehearing is denied.

D036656 Larson et al. v. Superior Court San Diego County/Sardella

The petition is denied.

D035198 People v. Cataldo

The judgments are affirmed. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

D033829 National Notary Association v. U.S. Notary et al.

Judgment affirmed to the extent the court (1) granted NNA's summary judgment motion based on a finding that USN violated section 17200; and (2) declined to order a restitutionary or disgorgement remedy. The following portions of the judgment are reversed: (1) the injunctive relief order; (2) the attorney fees order; and (3) the cost order. The court is ordered to reexercise its discretion on these three matters based on the undisputed facts that during the relevant time USN did not cause any unsolicited facsimiles to be transmitted into or from California. Each party to bear own costs on appeal. Haller, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

D036670 Crayton v. Superior Court of San Diego County/People

The petition is denied.

D033438 People v. Johnson

The judgment is affirmed. McDonald, J.; We Concur: Kremer, P.J., Benke, J.

**D036471 Dick Blank Insurance Agency, Inc. v. Superior Court of San Diego County/
Sellers, etc.**

The petition is denied.

D036340 In re Cefaratti on Habeas Corpus

The petitions for rehearing are denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

October 31, 2000 (continued)

D035481 In re Kimberly G., a Juvenile

The order is affirmed. Gilbert's appeal is dismissed. Nares, Acting P.J.; We Concur: Haller, J., McIntyre, J.

D035712 In re Juan V., a Juvenile

The judgment is affirmed. Haller, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

November 1, 2000

D035460 In re R. G. et al., a Juvenile

Order affirmed. Kremer, P.J.; We Concur: Nares, J., Haller, J.

D033681 People v. Mosteller

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

D034492 In re Marriage of Harner

The order is affirmed. Michelle is awarded costs on appeal. McDonald, J.; We Concur: Kremer, P.J., Benke, J.

D034072 Haines v. San Diego Police Department et al.

The appeal is dismissed. McDonald, J.; We Concur: Kremer, P.J., Benke, J.

D034921 People v. Bonner

The convictions are affirmed. The sentence is modified to stay punishment on the residential burglary conviction and affirmed as modified. The trial court shall correct the abstract of judgment to stay the 16-month sentence and advise the Department of Corrections of the modification.

D033341 Tolouei v. Mani et al.

The judgment is affirmed. Defendants are awarded costs on appeal.

D033453 San Diego City Firefighters, etc., v. City of San Diego et al.,

The judgment is vacated and the matter is remanded to the trial court for a new evidentiary hearing. Each side to bear its own costs on appeal. McIntyre, J., We Concur: Work, Acting P. J., Nares, J.

D034293 Abdul-Hafeez v. San Diego County Bar Association et al.,

The judgment is affirmed. Respondents to recover their costs of appeal. McIntyre, J., We Concur: Work, Acting P. J., Huffman, J.

D034777 Rinn v. Ozgunduz et al./Bleeco Corporation et al.

The judgment is reversed and this matter is remanded for further proceedings to determine the distribution and allocation of the interpleaded funds among the limited partnerships, limited partners, their counsel Schwartz, and appellant Ozgunduz. Respondents are to bear costs on appeal. Nares, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

D034168 People v. Naputi

The trial court is directed to modify the judgment so that the sentence on count 2 is stayed pursuant to section 654. The clerk of the superior court is ordered to correct the abstract of judgment and to forward a corrected copy to the Department of Corrections. In all other respects, the judgment is affirmed. Nares, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

November 1, 2000 (Continued)

D034544 Malish v. City of San Diego

The judgment is reversed. The case is remanded with directions to enter a new judgment declaring:

1. Section 33.0101, 33.0102, 33.0304 and 33.1103 are valid and not preempted by state law
2. Section 33.0105 and 33.0401 are inconsistent with state law and therefore preempted to the extent they authorize denial or revocation of a local permit based on violation, not showing a pattern of misconduct, of any of the provisions referenced in Financial Code section 21300, subdivision (c), or any ordinance that duplicates any of those provisions.
3. The provisions of section 33.1101 requiring that daily reports be on forms approved by the chief of police and include "the hour and date of the transaction and a reasonable description and true name of the person from whom such article was so acquired, as accurately as can be obtained by the person making such report" are preempted by Business and Professions Code section 21637 and 21638 as identification and reporting requirements other than those set forth in Business and Professions Code sections 21628, 21630 and 21633 and Financial Code section 21208.
4. The provisions of section 33.1104 requiring the dealer to hold property for 30 days from the date it is "received or purchased" and requiring the dealer, during the 30-day period, to keep the property "unaltered, as pledged or purchased, in lots separate and apart from other articles, merchandise or things" in the dealer's place of business are invalid under Business and Professions Code sections 21637 and 21638 as holding requirements other than those set forth in Business and Professions Code section 21636.

Malish is awarded his costs on appeal. CERTIFIED FOR PUBLICATION. McIntyre, J.;
We Concur: Benke, Acting P.J., Huffman, J.

D033394 James Rattan et al., v. United Services Automobile Association et al.

Judgment affirmed. Respondent to recover its costs on appeal. CERTIFIED FOR PUBLICATION.
Benke, J.; We Concur: Kremer, P.J., McDonald, J.,

D035478 In re Liam L., a Juvenile

Judgment and order affirmed. CERTIFIED FOR PUBLICATION. O'Rourke, J.;
We Concur: Kremer, P.J., McIntyre, J.

D036427 People v. Muro

The judgment is affirmed. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

D036042 Greene v. MacFarlane

D036544 Greene v. MacFarlane

Appellant's unopposed motion to consolidate the above-entitled appeals is granted. All future documents will be filed under D036042.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

November 1, 2000 (Continued)

D034426 People v. Cox et al.

D036343 In re Cox on Habeas Corpus

The pending petition for writ of habeas corpus, In re Michael Cox on Habeas Corpus, D036343, is consolidated with the pending appeal, The People v. Michael Cox and Julie Richardson, D034426, for oral argument and disposition.

D034426 People v. Cox et al.

D036343 In re Cox on Habeas Corpus

The judgment is reversed and remanded for new trial. Petition for writ of habeas corpus is denied as moot. Haller, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

November 2, 2000

D035374 In re PRISILABRIAN M. et al., Juveniles

The petition for rehearing is denied.

D035709 In re Christopher C., a Juvenile

The order is affirmed. Nares, Acting P.J.; We Concur: Haller, J., McDonald, J.

D036539 In re Yenifer S. et al., Juveniles

The attorney for petitioner Francisca M. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D036469 In re Stacy P., a Juvenile

The attorney for petitioner Priscilla D. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D034586 Sardella v. Larson et al.

The order is affirmed. Work, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

D034991 Mercury Books, Inc. v. G & B Emporia, Inc. et al.

Reversed and remanded. The judgment is reversed and this matter is remanded with directions to enter a permanent injunction in favor of Mercury, restraining respondents forthwith from operating an adult entertainment business at the subject bookstore site (3576 Main Street) in the City. Mercury shall recover from respondents its costs on appeal. Nares, Acting P. J., We Concur: Haller, J., O'Rourke, J.

D034858 Buening, II v. Department of Motor Vehicles

Affirmed. DMV to recover costs on appeal. Haller, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

D034747 People v. Joseph

The judgment is affirmed. Kremer, P.J.; We Concur: Work, J., Huffman, J.

D035107 In re Buck W., a Juvenile

The juvenile court's order is affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Work, J.

D034129 People v. Pisa

The judgment is affirmed. Nares, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

D034827 Mailhot v. City of San Diego et al./Padres L.P. et al.

The judgment is affirmed as to the challenge to the \$225 Million Appropriation Ordinance as violating City Charter provisions and is dismissed as moot as to the challenge to that ordinance as lacking an EIR. Nares, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

November 2, 2000 (Continued)

D034327 Mendoza v. Lindsay et al.

The judgment is affirmed. The Defendants are awarded costs on appeal. Huffman, Acting P.J.;
We Concur: Haller, J., McIntyre, J.

D035157 Palombo et al. v. Exploradora Baby Rock, SA DE CV et al.

Upon filing a written abandonment of appeal, the appeal as to Sandra Jiminez, Berenice Jiminez and
Fatima Jiminez is dismissed.

D035157 Palombo et al. v. Exploradora Baby Rock, SA DE CV et al.

The judgment and order are affirmed. Work, Acting P.J.; We Concur: Haller, J., McIntyre, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

November 3, 2000

D036320 In re Kolby Jarred W., a Juvenile

The attorney for petitioner Angela E. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review.

D035609 People v. Wells

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 38).

D036500 People v. Stump

The judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., McDonald, J.

D036033 In re Hernandez on Habeas Corpus

The petition is denied.

D033288 People v. Strong

D034308 In re Strong on Habeas Corpus

The petition for writ of habeas corpus (D034308) is consolidated with the appeal (D033288).

D033288 People v. Strong

D034308 In re Strong on Habeas Corpus

The judgment is affirmed. The petition for writ of habeas corpus is denied. McIntyre J.;
We Concur: Huffman Acting P.J., Haller, J.